Idaho Falls Consolidated Hospitals, Inc. ***and*** **Joint Council of Teamsters No. 2 and its affiliated Local 983, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent.** Cases 19-CA-11691 and 19-RC-9356

August 28, 1981

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On September 26, 1980, Administrative Law Judge Gerald A. Wacknov issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

We find merit in the General Counsel's exception to the Administrative Law Judge's failure to conclude that the conversation between Acting Director of Nursing Garnet Brown and employee Betty Anderson constitutes solicitation of grievances in violation of Section 8(a)(1) of the Act.

The evidence demonstrates that on May 1, 1979,[1] shortly after the commencement of the Unions' organizing campaigns, Brown, by telephone, contacted Anderson for the express purpose of determining the reasons underlying the employees' desire to seek union representation.[2] Brown testified that she asked Anderson to discuss some of the employees' problems with her, and stated, "that if I was going to be able to do any thing [sic] with the problems I was going to have to have them identified." Consequently, Anderson raised matters which were of concern to the employees with respect to, *inter alia*, inadequate communication between the administration and the employees, and wage raises. Brown's testimony further shows that in response to Anderson's question with respect to future access to Brown for the purpose of reporting problems, Brown stated that she had an "open door policy," and, if the employees felt that a problem could not be resolved through their head nurse, they should feel free to consult with her.

There is no evidence that Respondent has a policy of systematically soliciting grievances from its employees.

We conclude, contrary to the Administrative Law Judge, that the conversation between Acting Director of Nursing Brown and employee Anderson constituted solicitation of grievances in violation of the Act. Further, the solicitation of employee grievances, in the circumstances of this case, carried with it the implied promise that such grievances would be remedied.[3] Accordingly, we find that, by engaging in such conduct, Respondent violated Section 8(a)(1) of the Act.[4]

We also find merit in the General Counsel's exceptions to the Administrative Law Judge's failure specifically to determine Dr. David Shrader's and Dr. Thomas Richtsmeier's status in the management hierarchy of Respondent.[5] The failure of the Administrative Law Judge to make such a determination relates directly to his finding that the meeting held on July 18 was not violative of the Act, since Shrader acted as chairman of the meeting and Richtsmeier participated as a speaker.[6] Thus, before exploring the legality of the July 18 meeting, it is necessary to determine whether Shrader and Richtsmeier are supervisors, managerial employees, or employees who come within the coverage of the Act.

On the basis of a review of the relevant case law applied to the facts of this case, we are convinced that Shrader and Richtsmeier are managerial employees, and, as such, their actions are directly imputable to Respondent.[7]

The Board set forth its definition of the term "managerial employee" in *Ford Motor Company (Chicago Branch)*, 66 NLRB 1317, 1322 (1946):

> . . . employees who are in a position to formulate, determine, and effectuate management policies. These employees we have considered and still deem to be "managerial," in that they

[1] Unless otherwise specified, all dates herein refer to the year 1979.

[2] Brown learned, from House Supervisor Brunt, of Anderson's active involvement with the Unions' organizing campaigns about 15 minutes prior to placing the telephone call to Anderson.

[3] *Reliance Electric Company Madison Plant Mechanical Drives Division*, 191 NLRB 44 (1971), enfd. 457 F.2d 503 (6th Cir. 1972); *Certain-Teed Insulation Company*, 251 NLRB 1561 (1980); *Teledyne Dental Products Corp.*, 210 NLRB 435 (1974); and *Moody Nursing Home, Inc.*, 251 NLRB 147 (1980).

[4] Member Jenkins agrees that Respondent unlawfully solicited employee grievances and promised to remedy them but does so on the basis set forth in his dissenting opinion in *Uarco Incorporated*, 216 NLRB 1 (1974).

[5] In addition to being staff practitioners, Shrader is employed by Respondent as director of respiratory care, and Richtsmeier is employed by Respondent as director of coronary care and cardiovascular laboratory.

[6] The July 18 employee meeting was conducted to enable a group of physicians to express their views about the upcoming union election and to discuss establishing an independent in-house union.

[7] In these circumstances, we find it unnecessary to determine whether Shrader and Richtsmeier are also supervisors within the meaning of the Act.

> express and make operative the decisions of management.

This definition and the Board's exclusion of such managerial employees from bargaining units under the Act was endorsed by the United States Supreme Court in *N.L.R.B.* v. *Bell Aerospace Company, Division of Textron, Inc.*, 416 U.S. 267 (1974). The Court, quoting from *Retail Clerks International Association, AFL-CIO, et al.* v. *N.L.R.B.*, 366 F.2d 642, 645 (1966), reasoned:

> The rationale for this Board policy, though unarticulated, seems to be the reasonable belief that Congress intended to exclude from the protection of the Act those who comprised a part of "management" or here allied with it on the theory that they were the ones from whom the workers needed protection.

Upon a close review of the record in this case, we are persuaded that Shrader and Richtsmeier possess the relevant attributes of managerial status, and are, therefore, managerial employees for purposes of the Act.

Prior to the creation of Respondent in 1978, through the consolidation of Idaho Falls Hospital and Community of Idaho Falls Hospital, Shrader and Richtsmeier entered into contractual relationships with both hospitals and were employed, respectively, as respiratory care and coronary care departmental directors.[8] Pursuant to the terms of the employment contract, Shrader is responsible for, *inter alia*, preparing budgets for equipment and personnel needs; providing teaching for nursing staff and physicians; providing overall administration of the respiratory care department; and accepting the responsibility for the quality of respiratory care services. Shrader also is responsible for providing the overall medical supervision of the respiratory care department, and for providing policies and procedures relative to that department. Shrader testified that he is responsible for developing new policies and procedures for the department and that, through his assistant administrator, he augments and develops programs that he considers important to the department.

It is clear that Shrader and Richtsmeier are in positions which enable them to independently recommend, formulate, and effectuate management employer policy. Both doctors, as department directors, are closely aligned with management and perform managerial functions and are, therefore, managerial employees.[9] As managerial employees of Respondent, it follows that the statements and actions of Shrader and Richtsmeier are imputable to Respondent.[10]

We must now examine Shrader's and Richtsmeier's conduct during the July 18 meeting in the context of their status as managerial employees.

After carefully reviewing the record, we find merit in the General Counsel's exception to the Administrative Law Judge's failure to find that Respondent, through Shrader and Richtsmeier, violated Section 8(a)(1) of the Act by conducting and participating in the July 18 employee meeting.

The record demonstrates that as a result of conversations between Shrader and employee Anderson, Shrader agreed to organize and conduct a meeting to enable a group of physicians to express their views with respect to the union campaigns and the creation of an independent, internal union. The meeting was conducted by Shrader 2 days prior to the scheduled union election, and was attended by 25 to 30 employees.[11] Shrader invited four other physicians, including Richtsmeier, to address the employees and answer their questions.[12]

Shrader opened the meeting by stating, *inter alia*, that the physicians were not representing the medical staff or the County Medical Society, but were presenting their individual views of the Union's organizing campaigns. Shrader concluded his opening remarks by stating that he would keep notes of the meeting.[13]

As set forth in the record, Shrader stated during the meeting that, as an organized group, the employees would have the ability to close the hospital and prevent the delivery of health services. Shrader further stated that such a situation was threatening to him and to the other physicians present at the meeting, and that he did not feel that he could "practice in a community that threatens" the continued delivery of medical services, and was not "personally willing to work under the threat of

[8] The agreements expired about 18 months prior to the hearing herein, but Shrader continued his employment with Respondent under the same terms and conditions as set forth in the original agreement. The parties stipulated that Richtsmeier has the same employment status with Respondent as Shrader, and possesses the same authority, duties, and responsibilities in the coronary care department as does Shrader in the respiratory care department.

[9] See *N.L.R.B.* v. *Bell Aerospace Company, supra.*

[10] A contrary interpretation would produce a situation where managerial employees would be treated as a part of management for purposes of representation cases and as nonmanagement for purposes of determining unfair labor practices, an anomaly under the Act which would promote rather than inhibit instability in the workplace.

[11] Employee Bernita Watson, with Shrader's permission, tape-recorded the meeting. The recording, and a transcription thereof, is part of the record herein.

[12] In addition to Shrader and Richtsmeier, Drs. Newell Richardson, Jerry Marsden, and Larry Staker, president of the County Medical Society, addressed the employees during the meeting.

[13] We do not pass upon the issue of possible unlawful surveillance based on Shrader's note-taking, since the issue was not alleged in the complaint as a violation of the Act, and was not fully litigated during the hearing.

having to compromise my ability to take care of patients."

Similarly, Doctor Marsden voiced his views with respect to the relationship between the delivery of medical care, employee unionization, and his and several other physicians' continued presence at the hospital. Marsden stated that since patient care was his primary concern, and that under a rigid personnel system patient care would be jeopardized, he and other physicians would leave the hospital if the quality of patient care could not be insured.

Shrader's and Marsden's statements during the July 18 meeting amount to veiled threats to close the hospital, since, without physicians, the hospital would cease operations. Accordingly, we conclude that Respondent, through Shrader and Marsden, violated Section 8(a)(1) of the Act by threatening that they and other doctors would leave the hospital, potentially causing it to close, if the employees selected a union to represent them in collective bargaining with Respondent.[14]

The Administrative Law Judge found that Shrader and Richardson did not violate the Act during the July 18 meeting by advocating and soliciting the employees to form an independent, internal union. We disagree.

The record shows that, immediately following Shrader's opening remarks, Richardson presented his opinion of the most effective way for the employees to resolve their problems. Richardson stated that the protection of the National Labor Relations Board would be extended to any independent organization the employees set up on the night of the meeting. Richardson further stated, "[D]o not go to Washington. [D]o not go to the Teamsters Union. [D]o not go to a union outside this hospital, because they cannot do for you what you can do for yourselves. . . ." Richardson concluded his presentation about solving problems on the local level by exclaiming, "[L]et's form a group right here."

Shrader addressed the issue of establishing an internal labor organization by describing his experiences in successfully organizing medical residents prior to his employment at Respondent.

Employer participation in suggesting, soliciting, or encouraging employees to form an independent labor organization constitutes unlawful interference with employees' union activity. *Cagle's Inc.*, 234 NLRB 1148 (1978).[15] We find that in the context of Respondent's entire course of conduct, through Richardson's statements to the employees encouraging them to form an internal labor organization and Shrader's endorsement of the recommendation, Respondent violated Section 8(a)(1) of the Act.[16]

Since the Administrative Law Judge ruled that the unfair labor practices previously found were insufficient to warrant a finding that Respondent interfered with the employees' free choice in the election, and recommended that the Union's objections to the election be overruled, he declined to set aside the election. However, since we find that Respondent, through Shrader and Richardson, solicited and encouraged the employees to form an independent, internal union, and, through Shrader and Marsden, threatened to leave the hospital, potentially causing it to close, in the event that the employees selected a union as their collective-bargaining agent, which conduct tended to interfere with the free choice of the voters, we shall set the election aside. Accordingly, we shall direct a second election.

AMENDED CONCLUSIONS OF LAW

We hereby affirm the Administrative Law Judge's Conclusions of Law as modified below:

1. Substitute the following for Conclusion of Law 4:

"4. By soliciting grievances from an employee and implying that such grievances would be remedied, Respondent has restrained, coerced, and interfered with employees in the enjoyment of their rights under Section 7 of the Act and thereby violated Section 8(a)(1) of the Act."

2. Substitute the following for Conclusion of Law 5:

"5. By threatening employees with hospital closure in the event that the employees select a union as their collective-bargaining agent, Respondent has restrained, coerced, and interfered with employees in the enjoyment of their rights under Section 7 of the Act and thereby violated Section 8(a)(1) of the Act."

3. Insert the following as Conclusions of Law 6, 7, and 8:

"6. By soliciting employees to form an independent, internal union, Respondent has restrained, coerced, and interfered with employees in the enjoyment of their rights under Section 7 of the Act and thereby violated Section 8(a)(1) of the Act.

"7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[14] Marsden's statements are attributable to Respondent since we have determined that Shrader, who acted as chairman and invited Marsden to address the meetings, was acting in his capacity as Respondent's managerial employee at the time of the meeting.

[15] See also *Aeroglastics, Inc.*, 228 NLRB 1157 (1977), enfd. 610 F.2d 455 (1979); *Cromwell Printery Incorporated and/or Cromwell Business Forms Incorporated, et al.*, 172 NLRB 1817 (1968), and *L. C. Cassidy & Son, Inc.*, 171 NLRB 951 (1968).

[16] Richardson's statements are attributable to Respondent same in the way that Marsden's are. See fn. 14, *supra*.

"8. Such unfair labor practices found herein are sufficient to warrant the finding that Respondent interfered with the free choice of employees in the election, and it will be ordered that the election results be set aside, and a second election directed."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Idaho Falls Consolidated Hospitals, Inc., Idaho Falls, Idaho, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge for engaging in lawful union activity.

(b) Soliciting grievances from employees and implying that such grievances will be remedied.

(c) Threatening employees with hospital closure in the event that they select a union as their collective-bargaining representative.

(d) Soliciting employees to form an independent, internal union.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its Idaho Falls, Idaho, facilities copies of the attached notice marked "Appendix."[17] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the election in Case 19-RC-9356 be, and it hereby is, set aside, and that said case be, and it hereby is, remanded to the Regional Director for Region 19 to conduct a new election.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[17] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

Accordingly, we give you these assurances:

WE WILL NOT threaten you with discharge for engaging in lawful union activity.

WE WILL NOT solicit grievances from you and imply that such grievances will be remedied.

WE WILL NOT threaten you with closure of the hospital in the event that you select an outside union as your collective-bargaining agent.

WE WILL NOT solicit you to form an independent, internal union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you under Section 7 of the National Labor Relations Act.

IDAHO FALLS CONSOLIDATED HOSPITALS, INC.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice, a hearing with respect to this matter was held before me in Idaho Falls, Idaho, on March 11 and 12, 1980. The charge in Case 19-CA-11691 was filed on August 20, 1979, by Joint Council of Teamsters No. 2 and its affiliated Local 983, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Independent (herein called Teamsters). On October 2, 1979, the Regional Director for Region 19 issued a complaint and notice of hearing alleging violations by Idaho Falls Consolidated Hospi-

tals, Inc. (herein called Respondent), of Section 8(a)(1) of the National Labor Relations Act, as amended (herein called the Act). The aforementioned complaint was amended on February 20, 1980, to include an additional 8(a)(1) allegation.

Pursuant to a representation petition in Case 19-RC-9356 filed on June 6, 1979, and a Stipulation for Certification Upon Consent Election, thereafter executed by Respondent, the Teamsters, and by an Intervenor, Consolidated Nurses, Idaho Nurses Association (herein called the Association) on June 26, 1979, elections by secret ballot were conducted on July 20, 1979, in various voting units. In voting unit A, of approximately 237 eligible voters, 14 votes were cast for the Teamsters, 66 for the Association, and 101 against either labor organization. In voting unit B, of approximately 59 eligible voters, 3 votes were cast for and 51 votes were cast against the Teamsters. In voting unit C, of approximately 754 eligible voters, 132 votes were cast for and 432 votes were cast against the Teamsters. Timely objections to the election were filed by the Teamsters on July 24, 1979.

Thereafter, on October 2, 1979, the Regional Director for Region 19 issued a Report on Objections to Election, and concurrently therewith issued an order consolidating cases and notice of consolidated hearing, which report and order consolidated certain election objections with the related unfair labor practice proceeding for the purpose of hearing, ruling, and decision by an administrative law judge.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from the General Counsel and counsel for Respondent.

Upon the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent is a health care institution, maintaining facilities in Idaho Falls, Idaho, where it is engaged in the busines of providing hospital care services. In the course and conduct of its business operations, Respondent annually derives gross revenues in excess of $250,000 and annually purchases and receives goods and materials valued in excess of $5,000 directly from points outside the State of Idaho. It is admitted, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

It is admitted and I find that the Teamsters and the Association are labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES AND ELECTION OBJECTIONS

A. *The Issues*

The principal issues raised by the pleadings are whether Respondent violated Section 8(a)(1) of the Act by various instances of interrogation, promises, and threats, and whether as a result thereof, certain election objections should be sustained and new elections directed.

B. *The Facts*

Betty Anderson, a registered nurse, who was active on behalf of the Teamsters, testified that Garnet Brown, then the acting director of nursing, phoned her on May 1, 1979, and commenced the conversation by stating, "We have the names of the people who are involved in the Union and yours is one of them." Brown, according to Anderson, said she would like to know if there was any union activity going on at the hospital and asked whether there had been a previous union meeting, and where the union meetings were being held. Anderson responded to these questions in a noncommittal manner. However, she further testified that she was very open with Brown, and explained the nature of the problems which were of concern to the employees, and which she believed prompted their union activity. In this connection, Anderson mentioned that she was aware of a rumor that there would be no wage increases forthcoming. Brown said this was incorrect. Brown thanked her for talking and being candid with her and asked how she (Brown) could get the people to talk to her and trust her. At one point, according to Anderson, Brown stated she had no intention of firing Anderson for her union activity.

Garnet Brown testified that on May 1, 1979, she first became aware of the organizational campaign of the two hospitals, which had recently been consolidated for administrative purposes, upon being advised by a supervisor that Anderson was involved in certain union activities.[1] Thereupon, Brown phoned Anderson at her home and, after advising Anderson that she had heard Anderson's name mentioned in connection with the union activity, stated that she "didn't want to know whether [Anderson] was involved, who was involved, where the meeting was, when it was, or if there ever was a meeting." She then asked Anderson if she would discuss the difficulties or problems which must have precipitated the union activity. According to Brown, Anderson was first reluctant to discuss the matter, fearing that what she said would be used against her, and that she would be fired or would be harassed to the point that she would be forced to quit. However, upon being assured that there would be no repercussions and that Brown was merely wanting to identify the problems troubling the employees, there ensued a lengthy and candid conversation during which Anderson expressed certain concerns of the employees, stating, among other matters, that the employees felt insecure in their jobs as a result of the recent

[1] Anderson had previously invited her supervisor, Connie Barrera, to a union meeting and Barrera had apparently reported this to Brown.

consolidation of the two Idaho Falls hospitals, and that there was a lack of communication between the administrative staff and the employees. Further, Anderson stated, according to Brown, that she had heard there would be no wage increase for the employees that year. Brown replied that Anderson was incorrect and advised her that a wage increase for all employees, similar to the wage increase granted the year before, had been previously scheduled for the latter part of July.

Dennis Lingle, a former employee, had been a shift engineer. He worked under the supervision of Chief Engineer Bob Johnson. Lingle testified that on about July 16, 1979, Johnson, in the presence of at least one other employee, John Dixon, during a lunchtime conversation, told Lingle that the assistant administrator of the Riverview Hospital, Dale Symes, who was Johnson's immediate supervisor, had related to Johnson that if the employees "backed off" the Union, Dale Symes "would see that our needs would be met and that the hospital would get rid of the chief administrator, Gillack." Lingle replied to Johnson that this "was a bunch of garbage and he knew it."

Chief Engineer Johnson testified that he and the shift engineers always had lunch together at the same scheduled time and occupied the same table, and that five or six employees would have been present during the course of any such lunchtime discussion as related by Lingle. Johnson categorically denied that he made any such or similar statement attributed to him by Lingle, or that he had received such information from Symes or anyone else. Symes corroborated Johnson's testimony, stating that he never made such a statement to Johnson or anybody.

Dixon, a current employee, testified that although he customarily had lunch with Johnson and Lingle and other coworkers, he never heard such a statement by Johnson regarding Gillack or the Union.

Ruby Holbrook, a former employee who had been an LPN in pediatrics, testified that in mid-May 1979 she advised her supervisor, Dorothy Beller, that she supported and had become active on behalf of the Teamsters. Beller replied, "Well, they can't fire you for that, Ruby, but you could lose your job over it." Holbrook testified that she understood Supervisor Beller to mean that Holbrook would very likely lose her job if she became involved with the Union. Later, sometime prior to the election, according to Holbrook, Beller said, "Ruby, you know how I feel about this," and reminded her that she had received a substantial raise in pay. Beller went on to tell Holbrook of the disadvantages of being in the Union. Holbrook, prior to this time, had received a large pay raise.

Beller's version of the conversation is that Holbrook approached her and said she wanted Beller to know that she was 100 percent behind the Union and would do everything in her power to promote the Union. Beller replied something to the effect that Holbrook was allowed to promote union activities on her own time, including coffebreaks and lunch hours, but not during her worktime. Beller testified that she did not think she mentioned anything about the possibility of being discharged.

Peggy Lyons, an office nurse employed by Respondent, testified that she recalled statements by Dr. Stanley Cheslock, director of emergency services and ambulatory care, about the Union. These conversations took place in June 1979. Dr. Cheslock, according to Lyons, urged certain employees to make sure they understood the significance of signing a union card before they signed it. While Lyons did not recall that Dr. Cheslock directed employee Betty Wheeler to request the return of her authorization card, Lyons testified that as a result of this or a similar conversation, employee Betty Wheeler did get her card back from the Union.

During another conversation, Lyons asked Dr. Cheslock how he felt about the Union. Dr. Cheslock replied that he did not care much for the Union and preferred that the employees did not get involved, "but that if we felt that that's what we wanted to do, that's our own choice." During still another conversation regarding a prior organizational campaign, Dr. Cheslock stated, according to Lyons, that although he had not been employed by the hospital at the time of the prior campaign, he heard that the union ringleaders had lost their jobs.[2] Lyons stated that Dr. Cheslock is an "awful tease" and this is how she interpreted the above remarks of Dr. Cheslock concerning the Union.

Bernita Watson is a ward clerk. She wore a union button at work and did not attempt to conceal the fact that she was prounion. Watson testified that on or about May 21, 1979, House Supervisor Sandy Covert approached her in the presence of several other employees, including Ute Penny. According to Watson, Covert asked her if she had attended any of the union meetings. Covert then inquired who could attend such meetings, and Watson replied that any employee could attend except for administrative and managerial personnel. Covert replied that she was a supervisor and could hire and fire, adding that she would fire anybody she caught talking openly on the job or "on shift" about the Union. Then, looking directly at Watson, Covert said, "And you'd better cool it." Although Watson characterized Covert as a coworker and friend, Watson testified that she did take the latter statement as a threat. Watson also had additional conversations regarding the Union with Covert, which Watson sometimes would initiate, but these conversations are not alleged to include unlawful statements by Covert.

Ute Penney testified that she did not hear Covert ever make such a statement to Watson, nor did she hear Covert threaten anyone about the Union. Moreover, according to Penny, employees were allowed to openly discuss their feelings about the Union on the job.

Covert testified, in effect, that she was interested in showing whether she could attend union meetings, and when told by Watson that supervisory personnel could not attend, replied, "Well, I guess that leaves me out because I'm a supervisor, I can hire and fire." When asked whether she remembered telling Watson to "cool it,"

[2] Lyons also testified that Sally Hartert, an emergency room supervisor, made a similar statement to her. However, this is not alleged as a violation of the Act.

and that anyone talking openly about the Union while on shift would be fired, Covert testified as follows:

> No, I don't. I truely [sic] don't. I've tried to remember it and I don't recall ever saying that. If I did say it, it was to the extent that I did not want them talking openly about union or non-union during shift. I didn't say anything about their free time, which was their lunch break, coffee break, after business hours. I just didn't want the floors stirred up during the working hours when they were taking care of the patients.

In May 1979, according to Watson, Dr. Cheslock observed her wearing a union button and said, "Why don't you take that union button off . . . don't you realize that if the Union doesn't get in that you could lose your job and you would be probably one of the first fired, if the Union doesn't get in." Watson said she did not think that would happen, and that she was doing something she believed in. Watson testified that Dr. Cheslock was a personal friend and also her family physician, and she did not consider him to be a supervisor or manager. Watson further testified that other employees overheard the aforementioned conversation and some asked whether she believed Dr. Cheslock was threatening her. She told them that she did not take it as a threat but "rather on a friendship basis and a kidding position."

The July 18, 1979, meeting

Posters were placed on various bulletin boards at both hospitals 3 or 4 days prior to July 18, 1979, inviting employees to a meeting to find out how the physicians felt about the forthcoming union election scheduled for July 20, 1979. The posters contained no information which would identify the sponsor of this meeting, and the bulletin boards on which the posters appeared were apparently general purpose bulletin boards, utilized by Respondent, the employees, and the Unions herein.

The meeting as an outgrowth of various conversations between Dr. David Shrader, medical director of respiratory care, and employee Betty Anderson, who apparently, at least initially, had been one of the chief adherents on behalf of the Teamsters. During the course of these conversations, none of which are alleged to contain unlawful statements by Dr. Shrader, Anderson inquired about the physicians' concerns regarding unionization, and Dr. Shrader expressed his feelings, mentioning that he had been involved in certain successful internal organizational activity while a resident at another hospital. Thereupon, Anderson became interested in the details of establishing an independent union, and after speaking to other employees about such an option, suggested to Dr. Shrader that perhaps he and other physicians would agree to meet with the employees and answer their questions.[3] Dr. Shrader consented to this. Thereupon Anderson apparently caused the meeting notices to be posted, and Dr. Shrader invited four other physicians to also express their views to the employees at the meeting.

[3] Anderson testified that she had contacted an attorney in an attempt to get an independent union on the ballot in the forthcoming election, but that this effort did not materialize.

The meeting was held on July 18, 1979, at 7:30 p.m., in the dining area of the cafeteria at the Riverview Hospital; 25 to 30 employees were present. Bernita Watson, with the permission of Dr. Shrader, made a tape recording of the lengthy meeting, which lasted about 1-1/2 hours. During the course of the meeting, the five physicians presented their views. Each of these physicians is a practitioner on the hospital staff and, additionally, Drs. Shrader and Thomas Richtsmeier are also employed by Respondent, as discussed *infra.*

Dr. Shrader opened the meeting as follows:

> [S]ome of the people on the hospital staff [asked me] to consider speaking to employees because of some of the relationships that I've had in organizational activities in the past. I did not feel that it was necessarily my responsibility or even perhaps my place to try to suggest or speak to a large group on that particular matter. However, what I did and would like to do is try to spend some time with the group of physicians that are here, not representing the medical staff or representing the County Medical Society as a whole, but as individuals—spend a few moments each talking to you about some of our concerns as physicians and how some of the things that you are already discussing relating to organization and unionization—how that may impact or influence the medical care of [sic] the medical tenure of the community if you will. I am going to ask each person, each physician here, to spend a few moments just . . . . nothing has been pre-planned and nothing is specifically organized and that's done purposefully. Each one of us has spent some time thinking about what we might individually like to present to you and then, I would like to open it up at probably the last 30 or 35 minutes or let's say up to 8 o'clock—I can just barely see the clock—try to answer questions if there are any, that I'm sure that at least the nurses or the folks on the floor have had time to have some one on one relationships with some of the physicians, perhaps related to questions or concerns of their's or perhaps the medical staff themselves, but perhaps there might be other folks who have not had that opportunity. They might like to ask of the conservatives—not only a burning question for you, but one for us practioners. The physicians that are here don't represent any particular group . . . .

Dr. Newell Richardson presented his opinion that the problems confronting the employees should best be solved internally, "within the family" as he put it. He suggested that "if we set up an organization right here tonight" it would have the protection that the National Labor Relations Board extends to any labor organization, and suggested that this protection would allow employees to bargain and express their point of view to the hosptial administrators without the fear of discrimination, and that the administrators would not have the right to deny the employees their right to be heard. Richardson reiterated that the problem could be solved on a local basis, and stated, "Do not go to Washington. Do not go

to the Teamsters Union. Do not go to a union outside this hospital, because they cannot do for you what you can do for yourselves." He then went on to say:

> Let's form a group right here. And the third thing I would like to say is that I have been assured on good authority and my name is Mory [sic] Richardson and you can write this down—and you can come down to X-Ray Dept. with a long knife and my neck is stretched out that long if this does not happen. I have been assured that the administration sees that they can no longer deal the way they have been dealing and will institute employee counsels.[4] Employee counsels have every right to—every right, so form them, make them work, they can work. The NLRB will protect you with an employees' union. I know that they are going to re-form them. I believe they are dedicated to restructing them so they will work—if they didn't work and then pick up anything else, including unions from Teamsters, from AFL, to the Feds, to anybody else. Think about that carefully. You will work better locally through your local representative. It's my consideration.

Dr. Shrader then again reiterated that the physicians were only representing their own personal views, and stated that he had been invited to consider speaking to employees by a registered nurse,[5] who was aware that he had had prior experience in organizational activity. He further stated that he accepted this invitation upon observing that neither the County Medical Society nor the hospital medical staff had expressed any views regarding the forthcoming election.

Dr. Larry Staker stated that, although he is president of the County Medical Society, he was not speaking in an official capacity but rather as an individual practitioner. Staker acknowledged that the merger of the two hospitals had caused "considerable instability—it's caused all of us to be torn apart," and spoke at length of his apparently unsuccessful attempt to organize physicians for the purpose of presenting their concerns to the hospital administration "some months ago." He stated that he did not like unions and gave an example of a friend who runs a union electrical contracting business and lost money due to excessive labor costs. He said that union dues are used for funds to support political candidates and national programs that the union members do not necessarily believe in, and that health care in some unionized hospitals "across the country" had declined. Staker further stated that he hoped that the employees "could have your rights and have them established firmly on a good foundation and do it without the intervention of . . . . a third party."

Dr. Jerry Marsden stated that he did not know anything about the "union fuss," but was asked to come and give his viewpoint. He stated that he was not going to attempt to talk the employees into or out of anything, "because what you do is your own business." He then stated that his main concern was patient care, and expressed his fear that under a rigid system, cooperation among the employees may be jeopardized, and, consequently, that the quality of patient care may decline. He also stated that several physicians believed if the patients were not receiving the quality of care they deserve, the only option of the physicians would be to leave the hospital, adding that he was not saying that bringing a union in would create this situation.

Dr. Richtsmeier stated that the physicians would have to admit that they had "failed you people . . . in getting what you all need," and "we failed you, during the consolidation, as well as perhaps before, to allow you the things you felt were necessary to enjoy your work—whether it be salary or benefits or whatever." He stated that "we in some ways have been trying to get some things for you from the administration, but the efforts have fallen on deaf ears." He went on to state that the fact the employees had joined together as a group was beneficial and stated that he did not care whether they chose a union, some sort of professional organization, or an internal organization, so long as the employees worked together. He stated that the employees were going to have to make a very difficult choice, and they should choose a system that could provide uninterrupted and excellent patient care, that would provide the employees reasonable salaries and benefits and a feeling of personal achievement as a result of the ability to utilize their skills to the fullest extent, and cautioned that the employees beware of any system that "enlarges the bureaucracy."

At this point in the meeting, Dr. Shrader reiterated that the physicians were expressing their individual views. He then presented his concern that whatever type of organized group represented the employees, such an organization should not be one that interferes with his ability to render care to a patient, hinder the introduction of new methods or procedures, or close down medical care in the community. Dr. Shrader stated that he did not believe he could practice in a community under conditions which would compromise the capacity of physicians to render hospital care to patients. He then went on to explain at length his active involvement in organizing medical residents in 1979 at another hospital, and thereafter successfully, as a result of group action, demanded and acquired certain rights and privileges for medical residents, including reasonable wages and vacations, which were agreed to after good-faith bargaining. Shrader added that the employees could consider this and said that the residents with whom he had been associated had accomplished this on their own without the help of outsiders.

Delta Montgomery, an employee, said that she understood Dr. Shrader to be "asking us to consider very

[4] Despite the aforementioned statement, Dr. Richardson testified at the hearing that prior to the meeting he had not spoken to any hospital administrator either about the meeting or about the possibility of instituting "employee counsels." Dr. Richardson testified, in effect, that he meant to express the view that if he and other physicians supported the "concept of employee counsels," he felt the administration would "reinstate" them. The record is devoid of any explanation or definition of "employee counsels." Nor does the record show whether such "counsels" or perhaps "councils" had ever been utilized by Respondent, or that the employees even knew what he was talking about.

[5] However, Dr. Shrader did not specifically name Betty Anderson.

much not to go union," and inquired of Dr. Shrader what type of guarantee the physicians would give that the employees would be able to organize and obtain essential benefits through bargaining. Dr. Shrader replied that he was unable to guarantee anything. He stated that the employees would have to take the initiative and that "I'm not going to do it for you," adding that if the employees desired to form an employee group for the purpose of engaging in good-faith collective bargaining then the group should obtain the advice of legal counsel.

There ensued a colloquy regarding the cost of obtaining legal counsel and the extent of support the physicians would give to such an employee group. Montgomery again asked whether the physicians would help or even advise the employees in this endeavor. Dr. Shrader replied that each individual physician would support the efforts of the employees but would, in essence, not be directly involved. One employee exclaimed that the physicians were asking the employees to give up what bargaining power they then possessed, and Shrader said that "if it doesn't work, we'll try it again."

Dr. Staker stated that both the employees and physicians had equal bargaining "power," explaining that the physicians could shut down the operation of the hospital by refusing to handle patients, just as certain employees could refuse to perform their jobs in the laundry room, and "the whole damn place will grind to a halt." Staker asked the rhetorical question why the doctors didn't "do that 2 or 3 months ago when we were up in arms," and answered that the physicians' concern for the patients took precedence. He then reiterated the theme that if the Union came in and dictated that, for example, a nurse could not mop a floor, the quality of care would change immediately.

Dr. Staker said that we "can pull the cart together." Expanding on this theme, he suggested that although the employees and physicians belonged to separate interest groups, nevertheless both groups had the same antipathy toward the hospital administration, and that by efforts then being put forth by the employees and physicians, separately, the paths of the two groups were beginning to cross. Then Staker reminded the employees that they had previously asked, "How can we unite, what guarantees as physicians would you give us?" and alluded to one employee having asked that one of the physicians, perhaps Dr. Staker himself, become vice president of the internal organization. At this point Dr. Staker said, "Let's try it," apparently meaning that he or some other physicians would consent to be vice president of the group. This statement met with considerable applause, but then the employees voiced their skepticism regarding the feasibility of the idea. When asked by employee Montgomery: "Dr. Staker, if I can get a little radical here . . . if the union doesn't come in, you will still, like you say, [sic] as Vice President Monday? And organize these people together." Dr. Staker replied, "Absolutely . . . but you guys are organized . . . you got your act together . . . ." At this point one employee exclaimed, "You are splitting us more." Another employee, Minday Chapman, stated that the group appreciated the offer of assistance and "would take you up on it, but we can do it ourselves, we're no dummies . . . we're not stupid . . . we've got intelligence and can get our own lawyer . . . ."

It then appears that the employees engaged in their own discussion, with virtually no interruption by the physicians. One employee said she had not made up her mind one way or the other and hoped everyone could make an intelligent decision. This view was reiterated by another employee who also made some disparaging remarks about the professional competence of the physicians. Another woman expressed the view that she thought it was significant that they would get the physicians' support; another that "it's all of us together—it isn't your doings or our doings, it's all of us together."[6] One employee said that she loved every one of those doctors but she thought their timing was terrible.[7] Another said that Dr. Richtsmeier almost saved her life and that she admired him but could not agree with him.

As a result of the confusion, Dr. Shrader shouted over the din that the employees should speak one at a time. One woman very clearly pointed out that she understood as a result of the physicians' remarks that 52 doctors on the staff, "the elite of the hospital," had banded together to present their views to the administration regarding the problems confronting them, and were told by the administration to "lay down, roll over," and that now the physicians were telling the "peons" to organize. She then asked if the physicians could not obtain satisfaction from the administration, how were the employees, apparently without the Union, going to do it themselves. Another employee took up this theme and exclaimed that the doctors "were rolling over and playing dead."

Montgomery queried why the administration was permitting the doctors to hold this meeting and asked if it was not "kind of subversive." One physician answered that he could do what he wished. Another doctor said, "They [the administration] were very nervous about us coming here because they didn't know what we were going to say." Dr. Shrader said that he "had 3 phone calls from a variety of folks asking me what the hell are you doing," and he replied to them that he "had to come down and try to talk to folks and tell them what I think I'm worried about."

Thereupon many employees invited the physicians to the then-ongoing union meeting at the Teamsters hall and specifically gave them directions to the Teamsters hall where the meeting was being held.

The status of Drs. Shrader and Richtsmeier

In addition to being private practitioners on the staff of the hospital, Drs. Shrader and Richtsmeier are also part-time employees of the hospital. Pursuant to the provisions of separate agreements entered into with each hospital prior to the consolidation, Dr. Shrader was provided the title of "Medical Director of the Respiratory

[6] There were many side discussions going on at this time, together with considerable amount of laughing and confusion, and, as a result, the tape recording of the meetihg is not intelligible in many places. However, upon listening to the tape, it is apparent that many employees in attendance at the meeting were not giving their undivided attention to the remarks of the principal speakers or to each other.

[7] This is clear from listening to the tape but does not appear in the transcript of the tape introduced into evidence herein.

Care Department" and "Medical Consultant for the Respiratory Care Department," respectively, performing certain duties for each hospital, outlined in the agreements, the equivalent of 1-1/2 full days per week at each facility. While the agreements were terminated by mutual consent about 1-1/2 years prior to the hearing herein, Dr. Shrader has continued his employment with Respondent under the same terms and conditions as embodied in the expired agreements. The aforementioned agreements specify that Dr. Shrader will provide "overall medical supervision" and "medical guidance" for the respiratory care department, providing policies and procedures relative to that department; that he will accept the responsibility for the quality of respiratory care services, and provide teaching for nursing staff and physicians; assist the administration in preparing budgets for equipment and personnel needs; and determine the means and monitor the rendering of respiratory care services by the department.

Dr. Shrader testified that to maintain its accreditation, Respondent is required to have a physician as medical director for respiratory therapy who is ultimately responsible for the medical functioning of the department. In this capacity, Dr. Shrader is responsible for "quality controlling on a day to day basis" the processes, treatments, and policies of the department, and for developing new policies and procedures, apparently consulting with an assistant administrator in the areas of augmenting or developing programs or acquiring equipment.

Dr. Shrader testified that he does not hire or fire employees, nor has he ever recommended that such action be taken. Rather, these personnel functions are the responsibility of the technical director of respiratory services, Terry Hale, who, as manager of the department, interviews, hires, fires, trains, and otherwise supervises the day-to-day activities of the employees. Dr. Shrader further characterized his relationship or authority *vis-a-vis* department employees as not essentially different from that of any other staff physician.

Dr. Shrader testified that as medical director of the department he is legally liable for the quality of respiratory care services provided by staff physicians and departmental employees. In this regard, he would have the right to criticize and even recommend removal of a staff physician who was not providing acceptable patient care. Further, observing that an employee was incapable of being taught to provide acceptable patient care, he would bring the matter to the attention of the technical director. Thereupon, according to Dr. Shrader, the technical director would have the responsibility and authority to take whatever disciplinary action he deemed necessary; and Dr. Shrader could not insist upon the discharge of the employee. Should Respondent not discharge the employee or remove from the staff a physician who was jeopardizing patient care, this would place Dr. Shrader in a moral and legal dilemma which, as a last resort, would compel Dr. Shrader to resign his position.

Terry Hale, manager of the respiratory care department, testified that he does not discuss dicharges with Dr. Shrader prior to the discharge becoming effective, and would not be obliged to summarily discharge an employee who, according to Dr. Shrader, was violating professional standards. Rather, Hale would treat Dr. Shrader's request in the same manner as a request by any other staff physician and, after investigation, would take the requested action if the situation so warranted.

It was stipulated that Dr. Richtsmeier, as medical director of the coronary care unit and cardiovascular laboratory, has the same employment status with Respondent as Dr. Shrader, and has the same authority, duties, and responsibilities within such department as does Dr. Shrader within the respiratory care department.

C. *Analysis and Conclusions*

I credit the testimony of Garnet Brown who appeared to have an accurate recollection of her conversation with Betty Anderson on May 1, 1979, and had made detailed notes of the conversation contemporaneously therewith. Anderson was not attempting to conceal her union activity, as she had previously invited her supervisor to a union meeting. Anderson testified that she was "startled" and "shocked" that she would be receiving a call from Brown, and it is likely that her state of mind on receiving the call interfered with her comprehension of Brown's initial remarks. The remainder of the lengthy conversation involved a candid discussion of the problems Anderson perceived at the hospital, during which time no threats or promises were made, and Anderson was assured that her fears of being discharged or otherwise discriminated against were unfounded. Moreover, there is no contention that either Brown or any other representative of Respondent committed any similar alleged acts of unlawful interrogation throughout the entire course of the campaign. While the General Counsel apparently contends that Brown's statement regarding the scheduled wage increase, in the context of this conversation, is also unlawful, the record is clear that Brown was merely responding to Anderson's query about the previously scheduled wage increase, and was clearly not attempting to influence Anderson's union activity by a promise of a wage increase. I find that at no time during the conversation did Brown's attempt to discern the problems troubling the employees amount to coercive interrogation or a solicition of grievances violative of the Act. Thus, it is not the solicitation of greivences, but the promise to correct such grievances that is violative of the Act. *Uarco Incorporated*, 216 NLRB 1, 2 (1974). I find that no promises, expressed or implied, were made by Brown, and I shall dismiss the allegations of the complaint pertaining thereto. See *Federal Paper Board Company Inc.*, 206 NLRB 681, 683 (1973). Cf. *Flight Safety, Inc.*, 197 NLRB 223, 227, 228 (1972); *Certain-Teed Insulation Company*, 251 NLRB 1561, fn. 3 (1980).

I do not credit the testimony of Dennis Lingle regarding the alleged promise that Respondent would get rid of its chief administrator if the employees "backed off" the Union. Chief Engineer Bob Johnson credibly denied that he made such a statement. Moreover, John Dixon, whom Lingle stated was also present, did not recall Johnson making such a statement. Nor did the General Counsel seek to corroborate Lingle's testimony with testimony from any of the five or six shift engineers, whom I find

were also present during this lunchtime discussion. I shall therefore dismiss this allegation of the complaint.

Ruby Holbrook appeared to be a credible witness, and Supervisor Beller's testimony was somewhat vague and indefinite regarding what she may have actually said to Holbrook during the conversation in mid-May 1979. I therefore find that Beller did, in effect, advise Holbrook that while she could not be blatantly discharged for union activity, she could nevertheless lose her job as a result of such activity. Such a statement constitutes an implied threat of discharge, and is violative of the Act. I so find. *Meehan Trucking Sales, Inc.*, 201 NLRB 780, 784 (1973).

I credit the testimony of employees Bernita Watson and Peggy Lyons, and find that in May 1979, Dr. Cheslock, who was not called as a witness in this proceeding, told Watson that she would probably be one of the first fired if the Union did not get in; and that in June 1979 he advised Lyons that union ringleaders who were active in a prior campaign at the hospital had lost their jobs. Such statements are clearly violative of the Act. *Burns International Security Services, Inc.*, 234 NLRB 373 (1978); *Flock Bros., Inc.*, 239 NLRB 939, 942 (1978).

Regarding the earlier conversation between Lyons and Dr. Cheslock, the record testimony does not support the complaint allegation that Dr. Cheslock unlawfully induced employees to seek the return of their authorization cards from the Union. Rather, the record evidence reflects only that Dr. Cheslock warned employees to make sure they were aware of the import of the card before signing it. Therefore, I shall dismiss this allegation of the complaint.

I credit the testimony of Bernita Watson and find that on May 21, 1979, Supervisor Covert told her that employees openly discussing the Union on shift would be fired and that Watson should "cool it." I am mindful of the fact that Ute Penny, whom Watson claimed was present at the time, testified that she did not hear Covert make this remark. However, Covert did not specifically disclaim making such a statement, and her testimony contains a tacit acknowledgment that she may, in fact, have uttered this remark. Respondent appears to acknowledge that the employees were privileged to discuss the Union during working time and, there being no valid rule prohibiting such discussion, I find that Covert's statement to Watson was coercive and reasonably would tend to inhibit employees' legitimate union activity.

The July 18, 1979, meeting

It was repeatedly made clear to the approximately 30 out of 1,000 unit employees who chose to attend the July 18, 1979, meeting that the views being expressed by the physicians were their personal views, and the record is devoid of evidence that the meeting was conceived, initiated, authorized, or ratified by the administration, or that the employees were led to reasonably believe this was the case. To be sure, those physicians who expressed a preference strongly suggested and encouraged the employees to form an internal organization to engage in bargaining with Respondent, and stated that they would lend their support to such an organization without themselves becoming involved.[8] However, not only were no assurances given that the administration would be receptive to such an organization, but rather the employees were affirmatively told that the physicians, particularly Dr. Shrader, could not guarantee that the suggested internal organization would be viable or would be successful in bargaining with Respondent. Moreover, it was made clear to the group, as stated by Drs. Richtsmeier and Staker, and as put in perspective by an employee at the meeting, that the physicians themselves were unable to obtain satisfaction from the administration regarding problems created by the merger of the two hospitals and had failed and were rebuffed by the administration in their prior attempts to secure needed benefits for themselves and the employees.

Dr. Richardson's diatribe early in the meeting about employee "counsels" and his assurance that the administration would "institute," "reform," and "restructure" them, remains a complete mystery. Neither Richardson's remarks at the meeting, nor his testimony at the hearing, nor the meeting in its entirety, nor, for that matter, the parties' briefs, afford any enlightenment or proffer any explanation of what Dr. Richardson was talking about. Suffice it to say that from the context of Dr. Richardson's remarks he was apparently referring to something that the employees had previously enjoyed, or had at least experienced. However, as stated above, assuming *arguendo* that "employee counsels" are akin to an internal or independent labor organization, the employees at the meeting were given no guarantees that Respondent would be receptive to such an organization, and many employees bluntly expressed their skepticism that any internal organization was feasible.

I conclude, from a careful review of the tape recording and transcript of the meeting, that the employees in attendance were aware that each of the physicians was expressing his personal point of view, and that the employees clearly and correctly understood that the remarks made at the meeting were in no way attributable to Respondent. Rather, Dr. Shrader specifically and accurately advised the employees that the meeting was conceived and arranged by a unit employee. Understandably, for the reasons expressed at the meeting, the physicians were vitally concerned with the choice the employees made and clearly attempted to influence this choice. However, I do not find these efforts, under the circumstances, to either be unlawful or of such a nature to set aside the election. Even though Drs. Shrader and Richtsmeier are departmental medical directors and are employed by the hospital on a part-time basis, they are also, and perhaps foremost in terms of their daily activity, practitioners on the staff of the hospitals, and there is no evidence that the remarks they made were deemed by the employees to be other than expressions of opinion in their capacities as staff practitioners who were primarily interested in the excellence of patient care. Indeed, the fact that Dr. Shrader advocated an internal organization

[8] The statement by Dr. Staker to the effect that he would consent to become vice president of the group was quickly discounted as being infeasible and unwanted, and was apparently deemed worthy of little, if any, further consideration.

and that Dr. Richtsmeier stated he did not care what type of organization the employees selected strongly supports the conclusion herein that the physicians were expressing their personal preferences rather than espousing the administration's preference or speaking on behalf of the administration.

As found above, the unfair labor practices committed by Respondent during the organizational campaign are minimal at best, given the large number of employees involved. Moreover, throughout the campaign, Respondent did not even implicitly suggest that the employees should consider an internal or independent labor organization. Further, the July 18, 1979, meeting was attended by a relatively small group of employees and both unions were overwhelmingly defeated in the election.[9]

Lastly, I have found that given the entire content and context of the meeting,[10] the employees in attendance could have reasonably and correctly concluded that the thoughts and suggestions of the physicians expressed at the meeting were their own views as staff practitioners. I shall therefore dismiss the allegation of the complaint.

D. *The Election Objections*

The election petition herein was filed on June 6, 1979. The Teamsters filed timely objections to the election conducted on July 20, 1979, and the objections consolidated for hearing herein, namely Objections 5, 7, and 8, parallel certain complaint allegations discussed above.

Objection 5 alleges that Respondent's agents told unit employees an "inside" organization should be established instead of an outside labor organization, and that Respondent has actively assisted in the formation of such an inside organization. This objection involves the July 18, 1979, meeting. I find, for the reasons stated above, that none of the physicians espousing their views at this meeting were doing so as agents of Respondent. Nor under all the circumstances could the employees in attendance at this meeting have reasonably believed that such was the case. While, under some circumstances, an employer's responsibility for certain objectionable conduct need not be established, I find that the views expressed by the physicians at the meeting were not of such a nature that would render unlikely or impossible a rational and uncoerced choice by employees. See *Maremont Corporation, World Parts Division*, 251 NLRB 1617 (1980). I therefore recommend that this objection be dismissed.

Objection 7 alleges that supervisors told unit employees shortly before the election that employees would be fired if they cast votes for the Teamsters. As found above, the only post-petition conduct of this nature occurred sometime in June 1979, as a result of Dr. Cheslock's remark to Peggy Lyons that he heard that following a prior election campaign the union ringleaders had lost their jobs. While I have found that such a statement constitutes conduct violative of Section 8(a)(1) of the Act, I nevertheless find that, even assuming this remark was made following the filing of the petition, it is not, standing alone, sufficient to warrant the setting aside of the election herein. See *Dyersburg Cotton Products, Inc.*, 168 NLRB 1116 (1968). I shall therefore also recommend dismissal of this objection.

Objection 8 alleges that Respondent's agents told unit employees that if they did not vote for the Union, management would get rid of an unpopular administrator. I have found, above, that no such statement was made by Chief Engineer Bob Johnson, and I shall therefore recommend that this objection be dismissed.

Having found that the election objections filed herein are without merit, I shall recommend that the Board certify the results of the election held on July 20, 1979, in Case 19-RC-9356.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Teamsters and Association are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has threatened employees in violation of Section 8(a)(1) of the Act.

4. Except as found above, Respondent has not engaged in other unfair labor practices as alleged.

5. Such unfair labor practices found herein are insufficient to warrant the finding that Respondent interfered with the free choice of employees in the election, and it is recommended that the results of the election be certified.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I recommend that it be required to cease and desist therefrom and from any like or related conduct, and to post an appropriate notice attached hereto as "Appendix."

It is further recommended that the Board certify the results of the elections which were held on July 20, 1979, in Case 19-RC-9356.

Based on the foregoing findings of fact, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[11]

The Respondent, Idaho Falls Consolidated Hospitals, Inc., Idaho Falls, Idaho, its officers, agents, successors, and assigns, shall:

[9] It is clear, as the Board has stated, that whether there has been unwarranted interference with free expression of choice does not turn on election results, or the probable results of elections. *Professional Research, Inc., d/b/a Westside Hospital*, 218 NLRB 96 (1975). However, it is equally clear that the Board considers the results of the election to be a factor in determining whether there has been unwarranted interference. *Stouffer Restaurant & Inn Corporation*, 213 NLRB 799 (1974); *Standard Knitting Mills, Inc.*, 172 NLRB 1122, 1123 (1968).

[10] See *The May Department Stores Company d/b/a The M. O'Neil Company*, 211 NLRB 150 (1974).

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

1. Cease and desist from:

(a) Threatening employees with discharge for engaging in lawful union activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act, as amended.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its Idaho, Falls, Idaho facilities, copies of the attached notice marked "Appendix."[12] Copies of said notice, on forms provided by the Regional Director for Region 19, after being duly signed by an authorized representative of Respondent, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 19, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges unfair labor practices not herein found, and that the Board certify the results of the election held on July 20, 1979, in Case 19-RC-9356.

[12] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."